No. 528

Supreme Court of the United States

October Term, 1942

O. L. HASTINGS, ET AL., *Petitioners*

VS.

SELBY OIL & GAS COMPANY, ET AL.,
Respondents

ANSWER TO PETITIONERS' REPLY BRIEF

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Respondents make the following answer to the "Reply Brief for Petitioners":

I.

In their reply brief Petitioners question the interpretation which Respondents place upon the statements made by the trial Court in sustaining Petitioners' motion for judgment. Respondents interpret the trial Court's action as a ruling that the case

was not one of which the Federal Courts would take cognizance. The first, third and fourth sections of the reply brief are understood to present the view that the trial Court determined the merits of the case as developed by the testimony. The answers are:

(1) The statements (R., 102-103), made by the trial Court in sustaining the motion for judgment, signify that the trial Court ruled that the original opinion of this Court in the first Rowan & Nichols case required that the trail not adjudicate fact issues involved in such cases as this. This construction is supported by (a) the trial Court's statement, in effect, that the Rowan & Nichols opinion directed him not to substitute his judgment for that of the Railroad Commission; (b) the failure of the trial Court to make findings of fact, as required by Rule 52, Rules of Civil Procedure of District Courts of the United States.

(2) The Circuit Court of Appeals (R., 106-108, 111) gave to the trial Court's statements the same interpretation and meaning that Respondents have given to them.

(3) Petitioners at one time appeared to have somewhat the same views as Respondents have with respect to the basis of the trial Court's denial of relief. (See Petition for Writ of Certiorari, pp. 14-15.)

II.

The second subdivision of Petitioners' reply brief discuses two subjects (1) Respondents' referring to

the report by the Railroad Commission examiner who held the hearing on Petitioners' application, that "The testimony was that on the spacing arrangement there is no immediate loss of oil on applicant's lease"; and (2) their contention that the question of drainage is to be determined by comparing density of drilling on the 3.85-acre tract with density of drilling on a surrounding area eight times its size. The answers to these contentions are:

(1) Respondents recognize that the ultimate question is not what evidence was before the Commission at the time the permit was granted, but whether there then existed sufficient facts to justify the granting of the permit. However, in addition to stating the testimony offered to show that there did not exist at the time the permit was granted sufficient facts to justify the Commission's action. Petitioners made reference to the report of the Examiner to show the absence of any testimony before the Commission which would justify the granting of a permit for the purpose of preventing "confiscation."

(2) Frequently density comparisons have been made by comparing the density of drilling on a tract in issue with a surrounding area eight times its size; but the results of such comparisons are not always controlling on questions of drainage. *(Magnolia Peroleum Co. vs. Railroad Commission*, 120 S. W. (2d) 553, 554; *Shell Oil Co., Inc., vs. Railroad Commission*, 133 S. W. (2d) 791, 792.) Certainly, such comparisons do not control as against undisputed testimony in this case that the extisting well

on the tract in question will produce the recoverable oil under the tract and that the tract is not suffering any drainage that will prevent its owners' recovering through the one well the reserves of the tract and its fair share of the oil. (R., 87-88.) An area surrounding the 3.85-acre tract and of eight times its size would include eleven existing wells, or 30.8 acres with an average of one well to each 2.8 acres. (S. F., 91-92.) Two wells on the 3.85-acre tract would result in it having a density of one well to each 1.92-acres, or 68 per cent advantage over the surrounding area, and drainage of adjacent lands.

WHEREFORE, Respondents pray that the judgment of the Circuit Courts of Appeals be affirmed.

Respectfully submitted,

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Copies of this Brief have been furnished to Messrs. Gerald C. Mann, Attorney General of Texas, E. R. Simmons and Jas. D. Smullen, Assistants Attorney General of Texas, Austin, Texas, and Messrs. W. Edw. Lee, Tyler, Texas, and John Porter, Longview, Texas, attorneys for Petitioners.

Attorney for Respondents.